

JULIEN X. NEALS
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By: Ivan J. Whittenburg
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

_____	:	
PHOENIX FUNDING, INC.,	:	CIVIL ACTION NO. 2:10-cv-02638
	:	
Plaintiff,	:	
v.	:	ANSWER OF DEFENDANT
	:	CITY OF NEWARK
UNITED STATES OF AMERICA; CITY	:	
OF NEWARK, a Municipal	:	
Corporation of the State of	:	
New Jersey;	:	
	:	
Defendants.	:	
_____	:	

Defendant, CITY OF NEWARK, by way of Answer to Plaintiff's
Complaint says:

JURISDICTION AND VENUE

1. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.
2. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.

GENERAL ALLEGATIONS AND PARTIES

3. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.
4. Admit.
5. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.
6. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.
7. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.
8. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.
9. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.
10. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to his proofs.
11. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to his proofs.

COUNT ONE

(QUIET TITLE & DECLARATORY JUDGMENT)

12. This Defendant repeats and relies upon its Answers to the prior allegations of Plaintiff's Complaint as though they were set forth at full length herein.
13. This paragraph does contain allegations directed against this Defendant.
14. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.
15. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.
16. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.
17. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.
18. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.

WHEREFORE, this Defendant respectfully demands that Plaintiff's entire Complaint be dismissed with Prejudice and seek costs to be assessed against the Plaintiff.

COUNT TWO

(REFUND FROM NEWARK CITY)

19. This Defendant repeats and relies upon its Answers to the prior allegations of Plaintiff's Complaint as though it were set forth herein.
20. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.
21. This paragraph does contain allegations directed against this Defendant.
22. This paragraph does contain allegations directed against this Defendant.
23. Denied.

WHEREFORE, this Defendant respectfully demands that Plaintiff's entire Complaint be dismissed with Prejudice and seek costs to be assessed against the Plaintiff.

COUNT THREE

(FORECLOSURE)

24. This Defendant repeats and relies upon its Answers to the prior allegations of Plaintiff's Complaint as though it were set forth herein.
25. This paragraph does contain allegations directed against this Defendant.
26. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.
27. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to

its proofs.

28. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.

29. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.

30. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.

31. This Defendant lacks sufficient knowledge and information as to the allegations contained herein and Plaintiff is left to its proofs.

WHEREFORE, this Defendant respectfully demands that Plaintiff's entire Complaint be dismissed with Prejudice and seek costs to be assessed against the Plaintiff.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiff's claims are barred for failure to state a cause of action against this defendant upon which relief may be granted.

SECOND SEPARATE DEFENSE

Plaintiff's claims are barred by applicable law, rule, statute or regulation, including but not limited to the Statute of Limitations, controlling or requiring the institution of suit within a certain period of time following actual accrual, was not

complied with by the claimant, and accordingly, the claimant's claims are barred as a matter of law.

THIRD SEPARATE DEFENSE

This Defendant is free of any and all negligence.

FOURTH SEPARATE DEFENSE

Any damages allegedly sustained by Plaintiff were caused through the sole negligence of Plaintiff.

FIFTH SEPARATE DEFENSE

Any damages allegedly sustained by Plaintiff were caused through the sole negligence of any co-defendants.

SIXTH SEPARATE DEFENSE

Any damages that may have been sustained by Plaintiff were caused through the sole negligence of third parties over whom this defendant had no control.

SEVENTH SEPARATE DEFENSE

This defendant denies that it or anyone in its stead violated any duties or created any conditions that were the proximate cause of the damages allegedly sustained by the Plaintiff.

EIGHTH SEPARATE DEFENSE

This defendant affirmatively and specifically pleads each and every defense, limitation or immunity provided under N.J.S.A. 59:1-1, et. seq., the New Jersey Tort Claims Act.

NINTH SEPARATE DEFENSE

This defendant affirmatively and specifically pleads each and

every defense, limitation or immunity provided to these defendants under N.J.S.A. 59:2-1, et. seq., particularly N.J.S.A. 59:2-3, 59:2-4, 59:2-5, 59:2-6, 59:3-2, 59:3-6 and 59:3-7.

TENTH SEPARATE DEFENSE

This defendant affirmatively and specifically pleads each and every defense, limitation or immunity provided to these defendants under N.J.S.A. 59:3-3, et seq.

ELEVENTH SEPARATE DEFENSE

This defendant affirmatively and specifically pleads each and every defense, limitation or immunity provided to these defendants under N.J.S.A. 59:4-1, et. seq.

TWELTH SEPARATE DEFENSE

This defendant affirmatively and specifically pleads each and every defense, limitation or immunity provided to these defendants under N.J.S.A. 59:8-1, et. seq., particularly 59:8-4, 59:8-6, and 59:8-8.

THIRTEENTH SEPARATE DEFENSE

Any recovery to which plaintiff might otherwise be entitled is subject to reduction in accordance with the limitations on damages provided in N.J.S.A. 59:9-2, including but not limited to 59:9-2(d).

FOURTEENTH SEPARATE DEFENSE

Any liability which might otherwise be imposed upon these defendants must be reduced by the application of the Standard of

Comparative Negligence mandated by N.J.S.A. 59:9-4.

FIFTEENTH SEPARATE DEFENSE

The Plaintiff assumed the risk and was fully cognizant of any and all circumstances surrounding the alleged incident.

SIXTEENTH SEPARATE DEFENSE

The Plaintiff's claims are barred under the doctrines of laches and unclean hands.

SEVENTEENTH SEPARATE DEFENSE

The claims against this defendant are barred by the doctrine of res judicata and/or collateral estoppel.

EIGHTEENTH SEPARATE DEFENSE

Any and all of the damages alleged by Plaintiff was the result of an Act of God.

NINETEENTH SEPARATE DEFENSE

The Entire Controversy Doctrine bars the Plaintiff's claims against this defendant.

TWENTIETH SEPARATE DEFENSE

The Doctrine of Equitable Estoppel bars the Plaintiff's claims against this defendant.

TWENTY-FIRST SEPARATE DEFENSE

Plaintiff's claims are barred because Plaintiff has not been deprived of any right, privilege or immunity created or recognized by the United State Constitution, New Jersey State Constitution, of any Act of Congress or New Jersey state law.

TWENTY-SECOND SEPARATE DEFENSE

Plaintiff's claims are barred because this defendant engaged in the good faith performance of its duties at all times relevant to the subject matter of the Complaint, and therefore, is entitled to immunity from liability under both State and Federal laws.

TWENTY-THIRD SEPARATE DEFENSE

Plaintiff's claims are barred because this defendant did not deprive Plaintiff of due process under the law.

TWENTY-FOURTH SEPARATE DEFENSE

Plaintiff's claims are barred because this defendant is entitled to qualified, executive and/or good faith immunity.

TWENTY-FIFTH SEPARATE DEFENSE

Plaintiff is not entitled to recover punitive damages.

TWENTY-SIXTH SEPARATE DEFENSE

This defendant reserves the right to assert any and all other defenses, both factual and legal, as may be justified by information subsequently obtained.

JULIAN X. NEALS
CORPORATION COUNSEL

By: /s/ Ivan J. Whittenburg
Ivan J. Whittenburg
Assistant Corporation Counsel

Dated: June 21, 2010

CERTIFICATION OF FILING

The undersigned certifies that the Answer to the Complaint on behalf of this defendant has been filed electronically.

JULIEN X. NEALS
CORPORATION COUNSEL

By: /s/ Ivan J. Whittenburg
Ivan J. Whittenburg
Assistant Corporation Counsel

Dated: June 21, 2010